Alagarsamy v Tai Phaik Kee & Anor

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24–730–89
EDGAR JOSEPH JR J
23 SEPTEMBER 1991

Land Law *— Caveat — Removal — Earlier caveat was removed by registrar — Caveator entered subsequent caveat based on like claim on which earlier caveat was based — Whether court could remove subsequent caveat — National Land Code 1965 ss 326(1A) (b) & 329(2)*

Land Law *— Caveat — Notice of intended removal — Service — Notice served at caveator's place of abode on adult member of caveator's family — Caveator alleged to have no actual knowledge of notice — Whether service of notice valid — National Land Code 1965 s 431(1)(b)(i), (c)(i) & Form 19C*

Tai Phaik Kee and Tai Yean Chuah, the administratrix and administrator respectively of the estate of Tan Chin Ooi ('the caveatees') applied for the removal of a private caveat lodged by Alagarsamy ('the caveator') on the ground that it had been lodged contrary to the provisions of s 329(2) of the National Land Code 1965 ('the Code').

The caveatees had entered into a sale and purchase agreement with the caveator and one Appalasamy in respect of Tan Chin Ooi's land. The caveator and Appalasamy entered a private caveat in respect of the land but this was later withdrawn. The caveator then entered into another sale and purchase agreement with the caveatees. The caveator subsequently entered a second private caveat in respect of the land ('the second caveat'). The caveatees applied to the registrar to cancel the second caveat. The registrar then issued a 'notice of intended removal' of the second caveat in Form 19C. The Form 19C was served at the caveator's place of abode on an adult member of the caveator's family. The registrar then removed the second caveat pursuant to s 326(1A) (b) of the Code. The caveator then entered a third private caveat in respect of the land based on the like claim on which the second caveat was based ('the third caveat'). The caveatees applied to the High Court to remove the third caveat on the ground that the third caveat had been entered contrary to s 329(2) of the Code. The caveator argued that he was entitled to enter the third caveat because he did not have actual knowledge of Form 19C in respect of the second caveat.

Held, allowing the application:

(1) Form 19C was served on the caveator in compliance with s 431(1)(b)(i) and (c)(i) of the Code.

(2) By reason of s 431 of the Code, service of Form 19C need not be personal. Even if the caveator had not in fact received or had brought to his attention Form 19C, its service must be deemed good if s 431 of the Code was complied with.

(3) The registrar had acted within his powers to remove the second caveat. Once the second caveat was removed, this triggered the operation of s 329(2) of the Code and the third caveat was therefore entered in breach of s 329(2) of the Code. A

[Bahasa Malaysia summary B

Tai Phaik Kee dan Tai Yean Chuah, kedua-duanya pentadbir harta pusaka si mati Tan Chin Ooi ('penanggung kaveat') telah memohon penghapusan kaveat persendirian yang dibuat oleh Alagarsamy ('pengkaveat') atas alasan bahawa ianya telah dibuat bertentangan dengan peruntukan s 329(2) Kanun Tanah Negara 1965 ('Kanun itu'). C

Penanggung kaveat telah mengikat perjanjian penjualan dan pembelian dengan pengkaveat dan satu Appalasamy berkenaan dengan tanah Tan Chin Ooi. Pengkaveat dan Appalasamy telah membuat suatu kaveat persendirian berkenaan dengan tanah itu tetapi yang ini kemudiannya ditarik balik. Pengkaveat selepas itu mengikat satu lagi D perjanjian penjualan dan pembelian dengan penanggung kaveat. Pengkaveat berikutnya telah membuat satu lagi kaveat persendirian berkenaan dengan tanah itu ('kaveat kedua'). Penanggung kaveat memohon kepada pendaftar supaya kaveat kedua itu dibatalkan. Pendaftar kemudian mengeluarkan satu notis penghapusan yang dicadangkan (notice of intended removal) terhadap kaveat kedua E dalam Borang 19C. Borang 19C itu telah disampaikan di tempat tinggal pengkaveat kepada satu ahli keluarga pengkaveat yang dewasa. Pendaftar tersebut selepas itu telah menghapuskan kaveat kedua itu sesuai dengan s 326(1A)(b) Kanun itu. Pengkaveat kemudian telah membuat kaveat persendirian yang ketiga berkenaan dengan tanah itu F berdasarkan kepada tuntutan seperti yang mana kaveat kedua telah didasarkan ('kaveat ketiga'). Penanggung kaveat memohon kepada Mahkamah Tinggi untuk menghapuskan kaveat ketiga itu atas alasan bahawa kaveat ketiga itu telah dibuat bertentangan dengan s 329(2) Kanun itu. Pengkaveat berhujah bahawa beliau berhak membuat kaveat ketiga itu kerana beliau tidak mempunyai pengetahuan yang G sebenarnya tentang Borang 19C berkenaan dengan kaveat kedua.

Diputuskan, membenarkan permohonan itu:

(1) Borang 19C telah disampaikan kepada pengkaveat sesuai dengan s 431(1)(b)(i) dan (c)(i) Kanun itu. H

(2) Disebabkan oleh s 431 Kanun itu, penyampaian Borang 19C tidak perlu dilaksanakan ke diri. Biarpun pengkaveat sebenarnya tidak menerima atau telah menarik perhatian beliau kepada Borang 19C, penyampaiannya harus dianggap memuaskan jika s 431 Kanun itu telah dipatuhi.

(3) Pendaftar tersebut telah bertindak di dalam kuasanya dalam I menghapuskan kaveat kedua itu. Sebaik sahaja kaveat kedua dihapuskan, ini telah mencetuskan penguatkuasaan s 329(2) Kanun itu dan kaveat ketiga oleh kerana itu telah dibuat dengan melanggar s 329(2) Kanun itu.]

Cases referred to

1 *Lourdenadin v Ratnavale & Anor* [1984] 1 MLJ 297 (refd)
2 *Hock Hin Bros Sdn Bhd v Low Yat Holdings Sdn Bhd* [1984] 1 MLJ 92 (refd)
3 *Eng Mee Yong & Ors v Letchumanan, V* [1979] 2 MLJ 212 (distd)
4 *Ex p Little* 1958 SR (NSW) 173 (folld)

Legislation referred to

National Land Code 1965 ss 326(1A)(b), 329(2), 431(1)(b)(i), (c)(i), Forms 9, 19C

Parimala Devi (*Annamalai & Co*) for the caveator.
Gan Teik Chee (*Gan Teik Chee & Ho*) for the caveatees.

Edgar Joseph Jr J: This was an application by Tai Phaik Kee and Tai Yean Chuah, the administratrix and administrator respectively of the estate of Tan Chin Ooi deceased ('the caveatees') and the registered proprietors of the lands comprised in GM Nos 21 to 26, Lot Nos 497, 498, 501 to 504, Mukim and Daerah Kulim, in the State of Kedah ('the lands') for the removal of a private caveat bearing Presentation No 509/1988, Jilid No 10, Folio Nos 10 and 33 ('the caveat concerned') lodged by Alagarsamy a/l Periam Pillai ('the caveator') on the ground that it had been lodged contrary to the provisions of s 329(2) of the National Land Code 1965 ('the Code').

The undisputed facts underlying this application may be shortly stated.

The caveator jointly with one Appalasamy s/o Nookaiah, had on 14 August 1985 entered into a sale and purchase agreement dated the same day with the caveatees, whereby they had agreed to purchase from the caveatees the lands at a price of $500,000, the signatures of the parties thereto having been attested by a solicitor Mr Ang San Hai and a deposit of $25,000 to account of the purchase price paid to the caveatees.

On 17 September 1985, the caveator and his associate Appalasamy had lodged not the caveat concerned but an earlier caveat which for brevity and convenience I shall refer to as 'the first caveat' but which, however, was withdrawn seven months later, precisely on 17 April 1986, with the assistance of Mr Ang San Hai.

However, on the same day, that is to say, 17 April 1986, the caveator entered into another sale and purchase agreement whereby he alone had agreed to purchase the lands from the caveatees and it was on 24 April 1986 that he lodged a second caveat. I would add, in passing, that this other sale and purchase agreement dated 17 April 1986 was also prepared by Mr Ang San Hai who had also attested the signatures of the parties and that the caveator had paid a sum of $50,000 to account of the purchase price. Completion thereunder was to be effected on or before 14 August 1986 but there was a provision for an extension of time of three months subject to the payment of interest.

The caveator has alleged that the caveatees had, through another solicitor Mr Lee Boon Ten, applied on Form 9 dated 18 May 1987, being exh A3 to encl 3 ('the Form 9 application'), for cancellation of the second

caveat. The notice of intended removal of caveat dated 8 June 1987 issued by the Collector of Land Revenue, Kulim, Kedah, being exh A4 to encl 3 ('the Form 19C notice'), accompanied by the Form 9 application was, it was said, allegedly served upon the caveator on 22 June 1987. The proof of service dated 22 June 1987, being exh A5, and a letter dated 23 June 1987 from the Kulim Land Office, being exh A6, have been duly exhibited to the caveator's affidavit (encl 3).

However, the time for completion under the sale and purchase agreement dated 17 April 1986 was extended further until 31 December 1987 by a supplemental agreement dated 24 June 1987 also prepared by Mr Ang San Hai who attested the signatures of the parties.

The caveator has further alleged that it was only in November 1988 when he went to the Land Office, Kulim 'to chase up on the development plans for the said lands' that he first learnt of the removal of his second caveat. He then consulted his solicitors Messrs Annamalai & Co, and had on 26 November 1988 lodged a police report against Mr Ang Han Lai (exh A to encl 3). Shortly thereafter, on 1 December 1988, the caveator also lodged yet another caveat — a third caveat — being the caveat concerned.

Thereafter, on 6 August 1989, upon the application of the caveatees who were assisted by the solicitor Mr Lee Boon Ten, the Registrar of Titles had by his process server caused to be delivered to a male adult, at the caveator's place of abode, the Form 19C notice (to take effect one month from the date of service thereof), in purported compliance with the requirements of s 431(1) of the Code, the material portions of which read as follows:

> Without prejudice to any other method of service, a notice may be served on a person or body for the purposes of this Act —
>
> (a) ...
> (b) by delivering the notice —
> (i) at the person's usual or last known place of abode or business to his servant or to an adult member of his family; or
> (ii) ...
>
> (c) by leaving the notice in a cover addressed to the person or body —
>
> (i) at the person's usual or last known abode ...

The caveator has admitted by para 3 of his affidavit affirmed on 18 September 1989 (encl 3) that he 'had come to know that on or about 6 September 1989 a notice dated 6 August 1989 of the intended removal of caveat had been served at my house'.

More importantly, the process server one Encik Mohd Ali bin Daud attached to the Bukit Mertajam Land Office testified before me that he had on 22 June 1987 at dwelling house No 9 Lengkok Batik, Taman Sri Jaya, Bukit Mertajam, that being the place of abode of the caveator, served the Form 19C notice prescribed under s 326 of the Code on a male Indian named Nahendran a/l Krishnasamy, aged 21 years, who had acknowledged to him that he was a member of the family of the caveator and stayed there. The process server further testified that he had then obtained the signature and NRIC number of this individual on a proof of service copy of the Form 19C notice.

A Amplifying his evidence aforesaid, the process server stated that on arrival at the dwelling house, he saw Nahendran seated at a table in the hall but was not sure how he was dressed. He then disclosed his identity and the object of his visit to Nahendran and the latter said that he would receive the Form 19C notice.

B By way of background, as the proof of service copy of the Form 19C notice did not indicate the name of the person served, the Land Office Bukit Mertajam had, on the request of the solicitors for the caveatees, addressed an enquiry to the proper officer of the Registration Office, Petaling Jaya, Selangor, who responded by letter dated 28 August 1991, being exh C, stating that according to his records the name of the holder of C NRIC No A 189085 (that being the NRIC number endorsed on the proof of service copy of the Form 19C notice) was Nahendran a/l Krishnasamy, his date of birth being 9 March 1966 and his residential address being 105, Silibin Lane, Ipoh.

It is pertinent to state that nowhere in his affidavits has the caveator categorically stated that he had no knowledge of the Form 19C notice D though admittedly he did allege, as already noted, that it was only in November 1988 when he went to the Land Office, Kulim 'to chase up on the development plans for the said lands' that he first learnt of the removal of his second caveat. The point of substance was: did or did not the Form 19C notice come to his attention? It would seem that he has studiously E refrained from touching on this question. On the contrary, as already noted, by para 3 of his affidavit affirmed on 18 September 1989 (encl 3) the caveator has categorically admitted that 'I came to know that on or about 6 September 1989 a notice for the intended removal of the private caveat had been served at my house'.

But more to the point, by reason of the special provisions of s 431 of the F Code regarding the mode of service of notices, service of the Form 19C notice need not be personal. In the present case, I consider that regard being had to the particular circumstances aforesaid, the caveatees had adduced sufficient evidence, on the balance of probabilities, to invoke the special provisions as to the mode of service appearing in s 431(1)(b)(i) and G (c)(i) of the Code reproduced above.

The proper registering authority had therefore acted well within his powers in ordering the removal of the second caveat pursuant to the powers conferred upon him by s 326(1A)(b) of the Code.

The next question which arises is whether the third caveat, being the caveat concerned and the subject of the present application, should be H removed as contended by the caveatees.

Section 329(2) of the Code would appear to be precisely in point. It provides as follows:

> Where the Court has ordered the removal of any private caveat under section 327, or has refused an application under sub-section (2) of section 326 for an I extension of time with respect to any such caveat, *or where the Registrar has removed any caveat pursuant to sub-section (3) of section 326,* the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based. (Emphasis supplied.)

It is common ground that the caveat concerned was entered against the lands and is based on the like claim as that on which the second caveat was based.

But counsel for the caveator has contended that the decision of the High Court in Kuala Lumpur in *Lourdenadin v Ratnavale & Anor*,[1] cited with approval by Mr Teo Keang Sood in his well-researched and interesting article entitled 'Second Caveats: Some Reflections' [1985] 1 MLJ clxxxv, supports the proposition that entry of a subsequent caveat where a caveator does not have actual knowledge of the application to remove a previous caveat, is permissible under the Code.

There are three comments I should like to make regarding *Lourdenadin*'s case.[1] First, it was a case decided on s 329(2) of the Code in the form that it took prior to its amendment in the present form quoted above which amendment appears to nullify the judgment of this court in *Hock Hin Bros Sdn Bhd v Low Yat Holdings Sdn Bhd.*[2] The effect of the old s 329(2) was that it was only if removal of a caveat has been ordered by the court, that the registrar was precluded from entertaining any application for the entry of a further caveat in respect of the land or interest in question if it was based on the like claim as that on which the former one was based. Accordingly, on the facts in *Lourdenadin*'s case,[1] the court found that as the second caveat was 'not a renewal, revival or continuance of the first caveat by the same caveator on the same grounds as the first caveat' the plaintiff was not precluded in law from lodging the second caveat on different grounds.

Secondly, the learned judge then proceeded to consider what appeared to be a second submission advanced by counsel for the plaintiff as to why the caveat should remain; namely, that although service of the notice of intended removal of caveat under Form 19C was deemed, the plaintiff had not been *personally* served with the same and so had no knowledge thereof, and consequently was not in a position to apply to court for extension of time of the caveat under s 326(2) of the Code. With this submission the court also agreed and it is this ground to which counsel for the caveator has latched onto in the present application.

Clearly, the second ground on which the learned judge relied in arriving at his decision that the caveat should remain was obiter as it was in no way essential to it.

Thirdly, the learned judge said that he found support for his view that the plaintiff must have notice, and therefore *actual knowledge* of the application to remove the caveat, before removal can be considered final, in a passage in the judgment of Lord Diplock in *Eng Mee Yong & Ors v Letchumanan, V*[3] at p 214 wherein the following general observations were made:

> Under the National Land Code there are alternative procedures for the removal of a caveat at the instance of the caveatee. Under s 326 the caveatee may apply to the registrar for its removal and the registrar, provided he is able to serve the caveator with notice of the application (as he was not in the instant case), is required to remove the caveat from the register at the expiry of one month from the date of such notice, unless the caveator applies successfully to the court for an extension of the period for which the caveat shall remain on the register.

A The facts in *Eng Mee Yong*'s case[3] were that the caveator had changed his place of abode and the registered envelope containing the notice in Form 19C was returned undelivered to the Registrar of Titles by the postal department with the remark 'unclaimed' (see p 212 col 2H & I of the report). There was thus no service of the notice in Form 19C but only an unsuccessful attempt at service.

B In my view, Lord Diplock's words as to service must be read to mean service within the meaning of s 431(1) of the Code which does not necessarily require service to be personal. *Eng Mee Yong*'s case[3] is thus no authority for the proposition for which it was cited in *Lourdenadin*'s case.[1]

I would add that when, as here, there are special statutory provisions as C to service of notices, and these are complied with, the service must be deemed good even if the caveator has not in fact received or had brought to his attention the notice concerned. This is well illustrated by the Australian case of *Ex p Little*[4] in which Hardie J dealt with the situation where notices, prepared by the Registrar-General, were served on a solicitor whose name and address had been set out in the caveat (as required under the particular D statutory provision) but who was no longer acting for the caveator and who had no knowledge of her whereabouts. His Honour dealing with the particular statutory provision, said that it did not 'require a person serving a notice on the caveator at the address specified in the caveat to arm himself with evidence that the caveator in fact received or had brought to his E attention the notice in question. The responsibility of bringing that result about rests with the caveator and the caveator alone.'

At the end of the day, I am not a liberty to brush aside the explicit provisions of s 431(1)(b)(i) and (c)(i) of the Code as to the mode of service, which I am satisfied, upon the evidence, the caveatees had successfully invoked. It follows that once the registrar proceeded to order the removal of F the second caveat, that triggered the operation of s 329(2) of the Code having regard to the facts aforesaid. The caveat concerned — which was the third caveat — having been entered in breach of those provisions, there will have to be an order for its removal in terms of this application.

Application allowed.

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Reported by Wong Kian Kheong

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